

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

STRATOSAUDIO, INC.,
Patent Owner.

IPR2021-00716
Patent 8,688,028 B2

Before JUSTIN T. ARBES, HYUN J. JUNG, and KEVIN C. TROCK,
Administrative Patent Judges.

ARBES, *Administrative Patent Judge.*

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. Background and Summary

Petitioner Volkswagen Group of America, Inc. filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 11, 14–16, and 18 of U.S. Patent No. 8,688,028 B2 (Ex. 1001, “the ’028 patent”) pursuant to

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35 U.S.C. § 311(a). On October 25, 2021, we instituted an *inter partes* review as to all challenged claims on all grounds of unpatentability asserted in the Petition. Paper 16 (“Decision on Institution” or “Dec. on Inst.”). Patent Owner StratosAudio, Inc. filed a Patent Owner Response (Paper 28, “PO Resp.”), Petitioner filed a Reply (Paper 33, “Reply”), and Patent Owner filed a Sur-Reply (Paper 37, “Sur-Reply”). A combined oral hearing with Case IPR2021-00712 was held on July 21, 2022, and a transcript of the hearing is included in the record (Paper 49, “Tr.”).

Mazda Motor of America, Inc., Subaru of America, Inc., and Volvo Car USA, LLC filed a motion for joinder and a petition in Case IPR2022-00204, which were granted, and, therefore, were joined as petitioners in this proceeding. Paper 36. We adjusted the time of pendency in this proceeding beyond one year after institution due to joinder. Paper 55.

The proceeding was terminated as to Mazda Motor of America, Inc. and Volvo Car USA, LLC. *See* Papers 48, 54. In an Order entered concurrently with this Decision, the proceeding also is terminated as to Subaru of America, Inc.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that claims 11, 14–16, and 18 of the ’028 patent are unpatentable.

B. Related Matters

The parties indicate that the ’028 patent is the subject of the following pending district court cases: *StratosAudio, Inc. v. Volkswagen Group of America, Inc.*, Case No. 2:22-cv-10524 (E.D. Mich.), and *StratosAudio, Inc. v. Hyundai Motor America*, Case No. 2:22-cv-01712 (C.D. Cal.). *See* Pet. 1;

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Paper 5, 1; Paper 56, 1–2. Petitioner filed a petition challenging claims of a patent related to the '028 patent in Case IPR2021-00712 (instituted), and petitions challenging claims of other patents asserted in one or more of the district court cases in Cases IPR2021-00717 (denied), IPR2021-00718 (denied), IPR2021-00719 (denied), IPR2021-00720 (instituted), and IPR2021-00721 (instituted). Hyundai Motor America (“Hyundai”) filed a petition challenging claims 11–20 of the '028 patent in Case IPR2021-01303 (instituted, “the Hyundai IPR”)¹ and petitions challenging claims of other patents asserted in one or more of the district court cases in Cases IPR2021-01267 (instituted), IPR2021-01305 (instituted), and IPR2021-01371 (instituted). Various parties filed petitions and motions for joinder to certain of the instituted proceedings, which were granted, in Cases IPR2022-00203, IPR2022-00205, and IPR2022-00224.

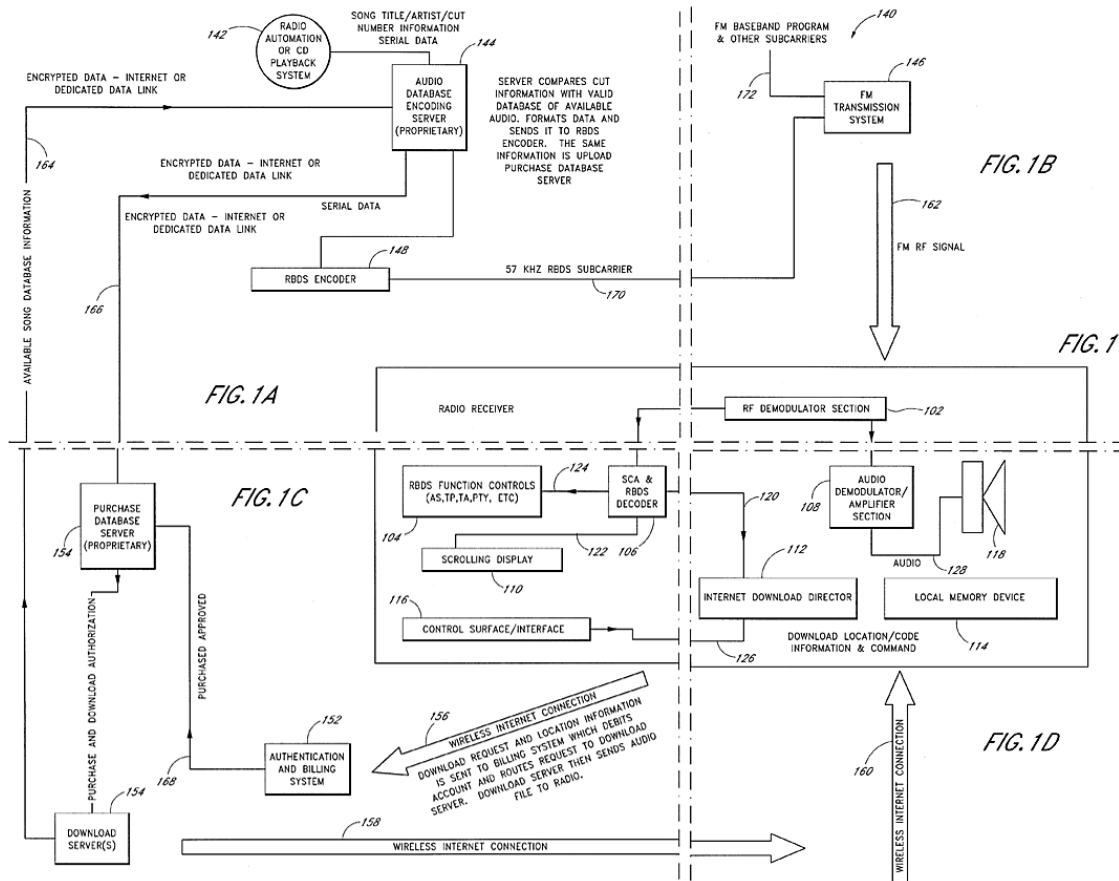
C. The '028 Patent

The '028 patent discloses “[a] broadcast response system [that] provides, e.g., a radio broadcast listener with the ability to obtain media content such as music or speech while listening to the radio.” Ex. 1001, code (57). “From the early days of FM broadcast transmission, stations have included ancillary signals such as background music or reading services for the blind along with a main carrier signal.” *Id.* at col. 1, ll. 26–28. “The most current and widely used data transmission standard is the United States Radio Broadcast Data Systems (‘RBDS’) standard” in which a system

¹ The Hyundai IPR involves different prior art from the references asserted in this proceeding. In a concurrently entered final written decision in the Hyundai IPR, we determine that Hyundai has shown by a preponderance of the evidence that claims 11–20 of the '028 patent are unpatentable.

“broadcast[s] a variety of program-related information,” such as station “call letters, station format, traffic alerts and scrolling text messages,” on a “subcarrier of a standard FM broadcast channel.” *Id.* at col. 1, ll. 32–53. The ’028 patent states that “[b]roadcasters using the RBDS standard can distribute information to a large number of users,” but “the standard does not allow individual users to respond to the broadcast information.” *Id.* at col. 2, ll. 26–29. For example, a user listening to the radio may like a particular song that he or she would like to purchase, but “must write down or remember the identifying information and then go to a store or online retailer to purchase the media.” *Id.* at col. 2, ll. 30–37. The ’028 patent purportedly solves that problem by allowing the user to respond to the broadcast and purchase media content. *Id.* at col. 2, ll. 53–58.

The '028 patent includes Figures 1A–D, which are reproduced together below.



Figures 1A–D depict radio station 140, radio receiver 100, and various other devices. *Id.* at col. 4, ll. 22–25. Radio automation or CD playback system 142 “extract[s] information about songs or a radio program” from various sources and provides playlist information to Automatic Purchase System (APS) server 144, which matches the extracted information with information in a database of audio files available to download. *Id.* at col. 5, ll. 41–52. If such a file is available, APS server 144 provides download information to RBDS/RDS encoder 148. *Id.* at col. 5, ll. 52–55. RBDS/RDS encoder 148 then “transmits the RBDS/RDS information using the 57 khz RBDS/RDS subcarrier 170 to the FM transmission system 146. The RBDS/RDS subcarrier signal 170 is mixed by the FM transmission system 146 with the

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